



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Barrass et al.
Serial No.: 09/964,150
Filing Date: September 25, 2001
Group Art Unit: 2637
Title: Switching System Supporting Data Communications Supported by
 Multiple Power Spectra

Mail Stop: AF
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Dear Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

The following Pre-Appeal Brief Request for Review ("Request") is being filed in accordance with the provisions set forth in the Official Gazette Notice of July 12, 2005 ("OG Notice"). Pursuant to the OG Notice, this Request is being filed concurrently with a Notice of Appeal. Applicants respectfully request reconsideration of the Application in light of the remarks set forth below.

REMARKS

In the prosecution of the present Application, the Final Office Action's rejections and assertions contain a clear error of law due to a failure to establish *prima facie* rejections in a Final Office Action. In the Final Office Action dated September 19, 2005, Claims 1-2, 5-10, and 13 were rejected under 35 U.S.C. 103(a) over U.S. Patent No. 6,088,368 to Rubinstain et al. ("*Rubinstain*"). Claims 3-4, 11-12, and 14-22 were rejected under 35 U.S.C. 103(a) over *Rubinstain* in view of U.S. Patent No. 6,775,355 to Bingel et al. ("*Bingel*"). Applicants cancelled Claims 15-21 in their Response to the Final Office Action. As described in further detail below, the Final Office Action failed to set forth a *prima facie* rejection of the pending claims.

Applicants contend that independent Claim 1 is allowable at least because the combination of references used in rejecting that claim fails to show a data switch "operable to: communicate with the one or more CPE devices using a first predetermined power spectral density (PSD); and communicate with the one or more CPE devices using a second predetermined PSD." The Final Office Action relies on *Rubinstain* to teach these limitations. However, as Applicants have previously stated in their Response dated July 1, 2005 at page 9 and in their Response to Final dated November 21, 2005 at pages 6-7, *Rubinstain* explicitly limits itself to communicating using a single PSD and thus not only fails to disclose, but also teaches away from, a data switch that can communicate with multiple PSDs as claimed in Claim 1. See Applicants' Response dated July 1, 2005 at page 9 and Applicants' Response dated November 21, 2005 at pages 6-7. Applicants contend that these portions of Applicants' previous responses clearly demonstrate that *Rubinstain* does not disclose the above cited limitations and refer the Panel to these portions.¹ In summary, however, the cited portions of *Rubinstain* relied on in the Final Office Action to teach the above referenced limitations (column 11, lines 19-28) fail to disclose a data switch operable to communicate using a first and second PSD because *Rubinstain* explicitly limits itself to a single PSD.

The Advisory Action presented additional arguments that *Rubinstain* discloses the

¹ It is noted in the OG Notice at <http://www.uspto.gov/web/offices/com/sol/og/2005/week28/patbref.htm> that "Applicants are encouraged to refer to arguments already of record rather than repeating them in the request." Accordingly, Applicants refer here to, and summarize, the previous arguments rather than reciting them explicitly.

above combination of references, pointing to different portions of *Rubinstain* than previously relied upon, but these arguments are incorrect. Applicants address each of these arguments below.

First, the Advisory Action stated that “Rubinstain discloses the ‘a higher bit rate or greater reliability than PSDs that comply with ANSI and ETSI standards’ stated in column 3, lines 35-40.” However, this section of *Rubinstain* does not mention PSDs at all, does not teach prior art systems that contain Applicants’ limitation, and does not teach that *Rubinstain*’s system contains Applicants’ limitation. Rather, column 3, lines 35-40 of *Rubinstain* describe prior art systems, stating as follows:

One of the enabling technologies for FTTN is very high rate digital subscriber line (VDSL). VDSL is an emerging standard that is currently undergoing discussion in ANSI and ETSI committees. The system transmits high speed data over short reaches of twisted pair commper telephone lines, with a range of speeds depending on actual length.

As noted in Applicants’ Response dated July 1, 2005 at page 9 and at Applicants’ Response to Final dated November 21, 2005 at pages 6-7, the only place *Rubinstain* discusses PSDs is in a passage where *Rubinstain* limits its system to a single PSD at 10 dBm.

Second, the Advisory Action states that the ADSL standard (col. 2, ll. 63-67) and the VDSL standard (col. 3, ll. 35-43), discussed as separate systems in the background section of *Rubinstain*, also teach the above recited limitation. This is incorrect for at least two reasons. First, these citations do not describe the capability of a data switch, nor do they discuss PSDs at all. Second, these citations are from the background section of *Rubinstain*, in which *Rubinstain* is separately listing different prior art systems – not a single switch with the capability of both systems. The ADSL system discussed is a separate system from the VDSL system discussed.

The Advisory Action further argues that *Rubinstain* meets the above limitations stating “Rubinstain discloses a system/facility over different digital subscriber lines over different bandwidths/PSDs.” This again is incorrect. The Action erroneously equates bandwidth, measured in bits per second, with PSDs, measured in decibel meters.

Finally, the Action repeats that “Rubinstain discloses two different amounts per per unit of frequency (PSD) in FIG.1 and FIG.2 that the switch 18 is operable to communicate

with the one or more CPE using a first PSD (on POST); and communicated with the one or more CPE using a second predetermined PSD on (10BaseS)." This is also incorrect. As Applicants have previously stated in their Response to Final dated November 21, 2005 at page 6, nowhere does *Rubinstain* teach that the POTS standard and the 10BaseS standard utilize different power spectral densities (PSDs). In addition, the POTS signal is not connected to switch 18. Figures 1 and 2 in *Rubinstain* show that switch 18 is only connected to the 10BaseS signal. The POTS signal is separated away from switch 18 by POTS splitter 22.

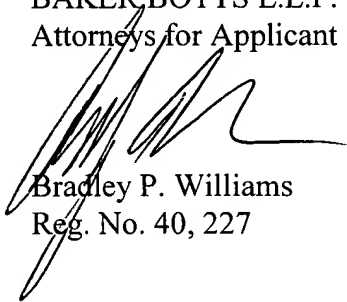
Thus, Claim 1 is allowable, as are its dependent Claims 2-14, because a prima facie case for rejection under 35 U.S.C. 103(a) has not been made. For similar reasons, Claim 22 is also allowable.

CONCLUSION

For the foregoing reasons, Applicants request that the application be allowed on the existing Claims. To the extent necessary, the Commissioner is hereby authorized to charge any fees or credit any overpayments to Deposit Account No. 02-0384 of Baker Botts L.L.P.

Respectfully submitted,

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Date: January 18, 2005

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